

William T. DelHagen (SBN 65615)  
Paul R. Flaherty (SBN 171170)  
**MURCHISON & CUMMING, LLP**  
801 South Grand Avenue, 9th Floor  
Los Angeles, California 90017-4613  
Telephone: (213) 623-7400  
Facsimile: (213) 623-6336

Attorneys for Defendant, CESSNA AIRCRAFT  
COMPANY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In Re PALOMAR CRASH OF JANUARY  
24, 2006,

CASE NO. Master File 06-CV-2711 DMS  
POR

**ANSWER TO COMPLAINT; DEMAND  
FOR JURY TRIAL**

Trial Date: None

STEVEN SHAFRAN; and ANNE M.  
SHAFRAN, a minor, by and through her  
Guardian Ad Litem, JAY SHAFRAN;  
MARGARET C. SHAFRAN, a minor, by  
and through her Guardian Ad Litem, JAY  
SHAFRAN; REID J. SHAFRAN, a minor,  
by and through his Guardian Ad Litem,  
JAY SHAFRAN; ISABELLE B. SHAFRAN,  
a minor, by and through her Guardian Ad  
Litem, JAY SHAFRAN,

Plaintiffs,

vs.

UNITED STATES OF AMERICA;  
CESSNA AIRCRAFT COMPANY, a  
corporation; and DOES 1 through 20,  
inclusive,

Defendants.

AND RELATED CONSOLIDATED CASES

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1 The named defendant, Cessna Aircraft Company (hereinafter referred to as  
2 "Cessna"), by and through the undersigned counsel, does hereby answer and otherwise  
3 respond to the plaintiffs' complaint as follows.

4 Cessna responds as follows to the specific allegations contained in the various  
5 numbered paragraphs of plaintiffs' complaint.

6 1. The claims in this paragraph are not applicable to Cessna and, accordingly,  
7 they are denied.

8 2. The claims in this paragraph are not applicable to Cessna and, accordingly,  
9 they are denied.

10 3. The claims in this paragraph are not applicable to Cessna and, accordingly,  
11 they are denied.

12 4. The claims in this paragraph are not applicable to Cessna and, accordingly,  
13 they are denied.

14 5. The claims in this paragraph are not applicable to Cessna and, accordingly,  
15 they are denied.

16 6. The claims in this paragraph are not applicable to Cessna and, accordingly,  
17 they are denied.

18 7. The claims in this paragraph are not applicable to Cessna and, accordingly,  
19 they are denied.

20 8. The claims in this paragraph are not applicable to Cessna and, accordingly,  
21 they are denied.

22 9. The claims in this paragraph are not applicable to Cessna and, accordingly,  
23 they are denied.

24 10. The claims in this paragraph are not applicable to Cessna and, accordingly,  
25 they are denied.

26 11. The claims in this paragraph are not applicable to Cessna and, accordingly,  
27 they are denied.

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12. The claims in this paragraph are not applicable to Cessna and, accordingly, they are denied.

13. The claims in this paragraph are not applicable to Cessna and, accordingly, they are denied.

14. The claims in this paragraph are not applicable to Cessna and, accordingly, they are denied.

15. The claims in this paragraph are not applicable to Cessna and, accordingly, they are denied.

## SECOND CAUSE OF ACTION

16. Admitted on information and belief.

17. Cessna is without sufficient knowledge or information concerning the allegations contained in paragraph 17 and, accordingly, they are denied.

18. Cessna is without sufficient knowledge or information concerning the allegations contained in paragraph 18 and, accordingly, they are denied.

19. Cessna is without sufficient knowledge or information concerning the allegations contained in paragraph 19 and, accordingly, they are denied.

20. Cessna admits that the information in this paragraph is correct.

21. Cessna denies "inspecting, maintaining, repairing" the subject aircraft, but admits that the balance of the allegations in this paragraph are correct.

22. Cessna admits that it designed, built, and sold the Model 560, but denies the balance of the allegations in this paragraph.

23. The allegations in paragraph 23 of the complaint are denied.

24. The allegations in paragraph 24 of the complaint are denied.

25. Cessna admits that the language exists but, on information and belief, denies the balance of the allegations in paragraph 25.

26. Cessna admits to the allegations in paragraph 26.

27. The allegations in paragraph 27 of the complaint are denied.

28. The allegations in paragraph 28 of the complaint are denied.

1 29. The allegations in paragraph 29 of the complaint are denied.

2 30. The allegations in paragraph 30 of the complaint are denied.

3 **THIRD CAUSE OF ACTION**

4 31. Cessna incorporates herein its responses to paragraphs 16 through 26 and 28  
5 through 30, inclusive, of the Second Cause of Action.

6 32. Cessna admits that it sells Cessna brand aircraft, and denies the balance of  
7 the allegations in paragraph 32.

8 33. The allegations in paragraph 33 of the complaint are denied.

9 34. The allegations in paragraph 34 of the complaint are denied.

10 35. The allegations in paragraph 35 of the complaint are denied.

11 36. The allegations in paragraph 36 of the complaint are denied.

12 37. Cessna is without sufficient knowledge or information concerning the  
13 allegations contained in paragraph 37 and, accordingly, they are denied.

14 38. The allegations in paragraph 38 of the complaint are denied.

15 **AFFIRMATIVE DEFENSES**

16 COMES NOW defendant, Cessna, and answering the complaint on file herein  
17 for itself alone and for no other defendant, admits, denies, and alleges as follows:

18 1. Under the provisions of the California Code of Civil Procedure, §431.30, this  
19 answering defendant denies both generally and specifically each, every and all of the  
20 allegations contained in said complaint, and the whole thereof, and denies that plaintiffs  
21 sustained damages in the sum or sums alleged, or in any other sum or sums, or at all.

22 2. Further answering the complaint on file herein, and the whole thereof, this  
23 answering defendant denies that plaintiffs sustained any injury, damage or loss, if any, by  
24 reason of any act or omission on the part of this answering defendant, or any agents,  
25 servants or employees of this answering defendant.

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1 AS AND FOR A FIRST, SEPARATE, DISTINCT AND  
2 AFFIRMATIVE DEFENSE, THIS ANSWERING DEFENDANT  
3 ALLEGES:

4 3. Plaintiffs are barred from any recovery herein on the basis that plaintiffs'  
5 decedent's own negligence was the sole and proximate cause of the accident and injuries  
6 sustained herein, but in the event a finding is made that fault exists on the part of this  
7 answering defendant which proximately contributed to plaintiffs' decedent's injuries and/or  
8 damages, plaintiffs' amount of recovery, if any, shall be reduced on the basis of decedent's  
9 comparative fault which contributed to the incident herein and the injuries and/or damages  
10 and claims upon which plaintiffs are seeking recovery against this answering defendant; and  
11 the negligence of plaintiffs' decedent was active and, therefore, would bar any indemnity  
12 from this answering defendant on the theory of active/passive negligence.

13 AS AND FOR A SECOND, SEPARATE, DISTINCT AND  
14 AFFIRMATIVE DEFENSE, THIS ANSWERING DEFENDANT  
15 ALLEGES:

16 4. This answering defendant specifically denies that any fault on defendant's part  
17 contributed to or was a proximate cause of any injuries or damages sustained by plaintiffs;  
18 but, in the event it is found that this answering defendant is at fault in any manner or to any  
19 degree, this answering defendant alleges upon information and belief that certain co  
20 defendants may be at fault to a certain degree for the injuries or damages sustained by  
21 plaintiffs' decedent, and further alleges upon information and belief that there may be  
22 persons or parties not named to this action who likewise may have contributed to a certain  
23 degree to the injuries and/or damages alleged to have been sustained by plaintiffs'  
24 decedent; whereby, this answering defendant contends that in the event there is found to be  
25 fault on its part which in any manner or degree contributed to these injuries and/or  
26 damages, a finding should be made apportioning and fixing the comparative fault of any or  
27 all parties or persons, whether named to this action or otherwise.

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1 AS AND FOR A THIRD, SEPARATE, DISTINCT AND  
2 AFFIRMATIVE DEFENSE, THIS ANSWERING DEFENDANT  
3 ALLEGES:

4 5. The complaint on file herein, and each of the purported causes of action  
5 therein contained, fails to state a cause of action against this answering defendant.

6 AS AND FOR A FOURTH, SEPARATE, DISTINCT AND  
7 AFFIRMATIVE DEFENSE, THIS ANSWERING DEFENDANT  
8 ALLEGES:

9 6. Any damage or injury suffered by the plaintiffs' decedent herein was caused  
10 by risk of which plaintiffs' decedent was well aware and which plaintiffs' decedent voluntarily  
11 assumed.

12 AS AND FOR A FIFTH, SEPARATE, DISTINCT AND  
13 AFFIRMATIVE DEFENSE, THIS ANSWERING DEFENDANT  
14 ALLEGES:

15 7. The accident referred to in the complaint and all injuries and damages, if any,  
16 resulting therefrom were the result of an unavoidable accident so far as this defendant was  
17 concerned.

18 AS AND FOR A SIXTH, SEPARATE, DISTINCT AND  
19 AFFIRMATIVE DEFENSE, THIS ANSWERING DEFENDANT  
20 ALLEGES:

21 8. The complaint, and each and every purported cause of action contained  
22 therein, fails to state facts sufficient to constitute a cause of action in that the full  
23 responsibility for the control of the situation, threatened harm, injuries and damages alleged  
24 passed to a third person or persons whose acts or omissions resulted in a superseding and  
25 intervening cause.

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1 AS AND FOR A SEVENTH, SEPARATE, DISTINCT AND  
2 AFFIRMATIVE DEFENSE, THIS ANSWERING DEFENDANT  
3 ALLEGES:

4 9. Plaintiffs are barred from any recovery on the basis of strict liability in tort, in  
5 that the product involved is not defective.

6 AS AND FOR AN EIGHTH, SEPARATE, DISTINCT AND  
7 AFFIRMATIVE DEFENSE, THIS ANSWERING DEFENDANT  
8 ALLEGES:

9 10. Plaintiffs are barred from any recovery on the basis of strict liability in tort, in  
10 that if any alleged defect in the product existed, such defect was caused by alteration to the  
11 product after its purchase by the consumer.

12 AS AND FOR A NINTH, SEPARATE, DISTINCT AND  
13 AFFIRMATIVE DEFENSE, THIS ANSWERING DEFENDANT  
14 ALLEGES:

15 11. Plaintiffs are barred from any recovery on the basis of strict liability in tort, in  
16 that if any alleged defect in the product existed, such defect resulted from misuse of the  
17 product.

18 AS AND FOR A TENTH, SEPARATE, DISTINCT AND  
19 AFFIRMATIVE DEFENSE, THIS ANSWERING DEFENDANT  
20 ALLEGES:

21 12. Plaintiffs are barred from any recovery on the basis of strict liability in tort, in  
22 that if any alleged defect in the product existed, such defect did not proximately cause the  
23 accident.

24 AS AND FOR AN ELEVENTH, SEPARATE, DISTINCT AND  
25 AFFIRMATIVE DEFENSE, THIS ANSWERING DEFENDANT  
26 ALLEGES:

27 13. That the Fair Responsibility Act of 1986, commonly known as Proposition 51,  
28 be given full force and effect per California Civil Code §§1431 and 1431.1 through 1431.5.

1 Specifically, it is asserted by this answering defendant that in the event a judgment is  
2 rendered against it and in favor of the plaintiffs, that it can be held responsible, if at all, for  
3 only that proportion of "non economic" damages for which it is found liable by jury  
4 determination and that the rule of joint and several liability not apply under such  
5 circumstances.

6 AS AND FOR A TWELFTH, SEPARATE, DISTINCT AND  
7 AFFIRMATIVE DEFENSE, THIS ANSWERING DEFENDANT  
8 ALLEGES:

9 14. Plaintiffs' complaint and the whole thereof is barred as to this answering  
10 defendant by the General Aviation Revitalization Act of 1994, 49 U.S.C. §40101 note.

11 AS AND FOR A THIRTEENTH, SEPARATE, DISTINCT AND  
12 AFFIRMATIVE DEFENSE, THIS ANSWERING DEFENDANT  
13 ALLEGES:

14 15. If decedent was injured by any product manufactured, distributed and/or  
15 supplied by this defendant, defendant nonetheless did not breach any duty to plaintiffs  
16 and/or decedent and is not liable for those injuries claimed because this defendant had no  
17 duty to warn decedent who was a knowledgeable and sophisticated user of the product  
18 who, at the time of his or her use of the product, knew or should have known of the  
19 product's dangers even in the absence of any warnings, as held by the California Supreme  
20 Court in Johnson v. American Standard Inc., 2008 WL 878933 (Apr. 3, 2008).

21 WHEREFORE, this answering defendant prays that plaintiffs take nothing by way of  
22 plaintiffs' complaint on file herein, that this answering defendant be dismissed hence with its  
23 costs of suit incurred herein, and for such other and further relief as the Court may deem  
24 just and proper in the premises.

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**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rules of Civil Procedure, Rule 38, defendant hereby demands a jury trial on any issues so triable.

DATED: May 19, 2008

**MURCHISON & CUMMING, LLP**

By: 

William T. DelHagen  
Paul R. Flaherty  
Attorneys for Defendant, CESSNA  
AIRCRAFT COMPANY

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 801 South Grand Avenue, 9th Floor, Los Angeles, California 90017-4613.

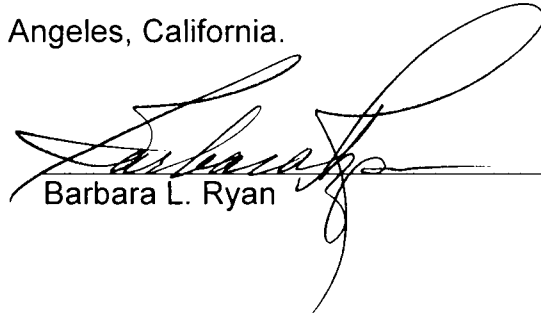
On May 20, 2008, I served true copies of the following document(s) described as **ANSWER TO COMPLAINT; DEMAND FOR JURY TRIAL** on the interested parties in this action as follows:

**SEE ATTACHED LIST**

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Murchison & Cumming's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on May 20, 2008, at Los Angeles, California.

  
Barbara L. Ryan

**SERVICE LIST**

**Steven Shafran, et al vs. United States of America, et al**

William H. Wimsatt, Esq. Attorneys for Plaintiffs  
Magana, Cathcart & McCarthy  
1801 Avenue of the Stars  
Suite #600  
Los Angeles, CA 90067  
Telephone: 310-553-6630  
Facsimile: 310-407-2295

Brian J. Panish, Esq. Attorneys for Jellinek Plaintiffs  
Panish, Shea & Boyle  
11111 Santa Monica Blvd., Suite 700  
Los Angeles, CA 90025  
Telephone: 310-477-1700  
Facsimile: 310-477-1699

Joseph F. McDowell, III, Esq. Attorneys for Jellinek Plaintiffs  
McDowell & Osborn  
282 River Road  
Manchester, NH 03-105-3360  
Telephone: 603-623-9300  
Facsimile: 603-623-5390

Frank A. Silane, Esq. Attorneys for Plaintiffs Goship Air, LLC,  
Condon & Forsyth LLP Jaxair, LLP & Global Serospace, Inc.  
1901 Avenue of the Stars, Suite 850 Attorneys for Estate of Garratt, Attorneys  
Los Angeles, CA 90067 for Estate of Francis  
Telephone: 310-557-2030  
Facsimile: 310-557-1299

Bruce A. Lambert, Esq. Attorneys for Estate of Garratt  
Schaden, Katzman, Lambert & McClune  
9596 Jeffco Airport Avenue  
Broomfield, CO 80021  
Telephone: 303-465-3663  
Facsimile: 303-465-3884

Donald W. Lojek, Esq. Attorneys for Estate of Francis  
Lojek Law Office Chtd.  
1199 West Main Street  
Boise, ID 83701  
Telephone: 208-343-7733  
Facsimile: 208-343-5200

Cynthia J. Wooley, Esq. Attorneys for Estate of Garratt  
Law Office of Cynthia J. Wooley  
P. O. Box 6999  
180 First Street West  
Suite 107  
Ketchum, ID 83340  
Telephone: 208-725-5535  
Facsimile: 208-725-5569

1 Thomas J. Byrne, Esq.  
2 Byrne, Kiely & White LLP  
3 1120 Lincoln St., Ste. 1300  
4 Denver, CO 80203  
5 Telephone: 303-861-5511  
6 Facsimile: 303-861-0304

Attorneys for Plaintiffs Goship Air, LLC,  
Jaxair, LLPm abd Global Aerospace, Inc.,  
Attorneys for Estate of Garratt, Attorneys  
for Estate of Francis

1 James W. Huston, Esq.  
2 Morrison & Foerster LLP  
3 12531 High Bluff Drive, Ste. 100  
4 San Diego, CA 92130-2040  
5 Telephone: 858-720-52100  
6 Facsimile: 858-720-5125

Attorneys for Defendant, Third-Party  
Plaintiff COUNTY OF SAN DIEGO

8 U S Attorneys Office  
9 U S Attorneys Civil Division  
10 Southern Division  
11 880 Front St., Ste.6253  
12 San Diego, CA 92101  
13 Telephone: 619-557-5662  
14 Facsimile: 619-5577122

Attorneys for Defendant United States of  
America

12 Peter Francis Frost, Esq.  
13 US Department of Justice  
14 P. O. Box 14271  
15 Washington, DC 20044-4271  
16 Telephone: 202-616-4000  
17 Facsimile: 202-616-4002

Attorneys for Defendant United States of  
America

16 Michael D. Jonescu, Esq.  
17 Law Office of Robert A. Stutman P.C.  
18 500 No. State College Blvd.  
19 Suite 1100  
20 ORANGE, CA 92868  
21 Telephone: 562-432-4300  
22 Facsimile: 562-437-7059

Attorneys for Defendant New Hampshire  
Insurance Co.